these revisions, too, were allowed to become effective without substantive decision.[14]

AT&T has now chosen for the third time to increase the rates for analog private line services. It has proposed to increase MPCs another 100% for a total cumulative increase of 1,000 percent over the past 11 months. In addition, it has proposed to restructure the interoffice circuit charges to eliminate the differences in rates between mileage bands, thereby effecting for certain short haul circuits a 30% increase in this filing and a cumulative increase of approximately 340%.[15] The total economic impact on ARINC alone for the current filing is approximately $250,000.00 per year and, for all filings, over $600,000.00 dollars a year! The airlines and other customers will be similarly harmed.

## II. Transmittal No. 4322 Is Inconsistent With Commission Objectives To Protect Captive Ratepayers

AT&T's proposed changes to Tariff F.C.C. No. 9 in Transmittal No. 4322, if allowed to become effective, would undermine the objectives established in the FCC's

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[14] AT&T Communications, 7 FCC Rcd 1966 (1992).

[15] The fixed mileage charges for the 1-50 mileage band increased from $75.72 to $175.22 in November, 1991, and will increase to $270.00 under the proposed revisions. The per mile charges decreased from $3.00 to $1.20 in November, 1991, and will decrease further to $0.32 under the proposed revisions. Consequently, the monthly charges for a short haul IOC increased from approximately $79.00 to $177.00 in November, 1991, and to about $270.00 under the current proposal.

Interexchange Competition Order. As such, the proposal violates Section 201 of the Communications Act requiring carriers to establish just and reasonable rates.[16] In its Interexchange Competition Order, the Commission concluded that analog private line services are "less subject to competition than other business services."[17] Based on this finding, the FCC concluded "that further streamlining of our regulation of AT&T's analog private line services would not be in the public interest." The agency stated:

> [A]nalog private line services are of diminishing importance in the marketplace and these services are consequently less subject to competition than other business services. Under the circumstances, we are concerned that elimination of price cap restraints for analog private lines services could lead to higher prices for these services while many customers would likely respond to higher prices by switching to digital services, adequate substitutes using digital technology are not currently available to all users of analog private line services.[18]

Accordingly, the Commission retained price caps, which contain limitations to prevent rate churn and excessive price changes, for these services.[19]

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[16] 47 U.S.C. § 201(b)(1991).

[17] Interexchange Competition Order, 6 FCC Rcd at 5895.

[18] Id. (emphasis added).

[19] See, e.g., Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3038 (1989) ("Price Cap Order").

Nevertheless, the fears about monopoly abuses expressed by the Commission, as well as by ARINC and others, in the Price Cap and Further Deregulation Proceedings are being realized through AT&T's previous filings and will be reinforced here if Transmittal No. 4322 is allowed to become effective. The Bureau should therefore reject the proposal as inconsistent with the agency's Interexchange Competition Order. The tariff is unlawful on its face because it demonstrably conflicts with the Communications Act and Commission orders.[20]

Alternatively, the FCC should suspend these rates in order to allow the Commission and interested parties an opportunity to determine their reasonableness. Based on the facts presented above, ARINC has shown there is a high probability the tariff would be found unlawful after investigation. It also has shown that irreparable injury will result if the tariff filing is not partially suspended because of, among other things, the adverse impact it will have on ARINC's provision of services, including public safety services, for travellers.

On the other hand, the partial suspension requested here would not substantially harm AT&T or other interested

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[20] See, e.g., American Broadcasting Cos. v. FCC, 633 F.2d 133, 138 (D.C. Cir 1980); Associated Press v. FCC, 448 F.2d 1095, 1103 (D.C. Cir. 1971); MCI v. AT&T, 94 F.C.C. 2d 332, 340-41 (1983).

parties, because ARINC is not asking the agency to suspend rate decreases and AT&T is not entitled to unreasonable rate increases. Finally, the suspension would not be contrary to the public interest. In fact, ARINC has shown that suspension is consistent with the public interest expressed by the Commission in its Orders.

In any event, it is in the public interest to avoid unreasonable rates, disruptive rate churn and violations of the FCC's rules. Thus, ARINC has met its burden to justify a suspension under the circumstances.[21] If the Bureau chooses not to suspend the tariff, it should as a minimum investigate the lawfulness of the rates.[22]

## III. AT&T's Transmittal Further Emphasizes the Need for the FCC To Clarify the Application and Scope of the Interexchange Competition Order

Transmittal No. 4322 emphasizes the critical need to clarify the application and scope of the Interexchange Competition Order. Specifically, the FCC should clarify what rate elements should be considered protected under the Commission's rules and in particular whether analog multipoint charges should be subject to these protections

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[21] See generally 47 C.F.R. § 1.773(a)(iv) (1991).

[22] The agency should suspend the rates for at least one day and establish an accounting procedure before initiating an investigation to ensure that ARINC can obtain retroactive relief. See, generally Illinois Bell Telephone Company v. FCC, No. 89-1365 (D.C. Cir. June 16, 1992).

whether or not they are associated with analog or digital interoffice circuits.

In its pleadings on Transmittal Nos. 3464 and 3465, AT&T claimed that analog services that connect to digital interoffice circuits should not be placed in the new Basket for analog services established by the Interexchange Competition Order. AT&T claimed that to do so "would make the services subject to continuing price cap regulation dependent not on the nature of the service provided by AT&T (i.e., analog or digital) but on the nature of the customer's terminal equipment."[23]

AT&T's position is inconsistent with the intent and purpose of the Commission's objectives. Although AT&T may employ digital inter-office circuits, it provides analog service to ARINC. Indeed, the concerns expressed by ARINC and other users of analog private line services -- concerns recognized as valid by the Commission -- are driven by the analog nature of the termination points of a circuit. For marketplace purposes, a circuit is defined as analog or digital by its termination points, not by its interoffice circuits. A customer is captive and in need of greater regulatory protection because its termination points are

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[23] See Letter from John J. Langhauser, AT&T, to Donna R. Searcy, FCC (Oct. 22, 1991) ("AT&T Letter") (Informational letter associated with AT&T Transmittal Nos. 3464 and 3465) at 2.

analog. This circumstance does not change because AT&T unilaterally converts its IOCs from analog to digital in order to accommodate its own business objectives.[24]

More importantly, AT&T's position ignores the FCC's objective to protect analog ratepayers that subscribe to monopoly services without competitive alternatives. AT&T's claim that there are numerous suppliers of analog multipoint circuits and, thus, that analog users are not captive ratepayers is disingenuous.[25] In fact, the number of viable alternative suppliers is limited. Moreover, no new providers are likely to enter this particular segment of the market, since demand is declining as users transition to digital services. Thus, AT&T remains the dominant provider of analog multipoint services.[26]

Even if numerous suppliers existed, ARINC and other current AT&T customers would not be able to switch easily to

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[24] Customers with analog multipoint circuits used in conjunction with analog IOCs usually do not request a conversion from analog to digital IOCs. AT&T unilaterally implements the conversion for its own purposes and simply notifies the customer of its action. See AT&T Transmittal No. 1587 (filed April 28, 1989). From the customer's perspective, the conversion is transparent; the customer receives the same service following the conversion that it received before the conversion.

[25] AT&T Letter, at 2-3.

[26] The Commission has recognized that AT&T holds a much higher market share for the analog private line segment of the private line market than for other segments of that market. Interexchange Competition Order, 6 FCC Rcd at 5892 n.106.

those suppliers. The costs and disruptions associated with such forced migration outweigh any perceived countervailing purposes. ARINC has estimated that its own costs of transitioning to digital multipoint circuits would total over $2 million. The airlines and other users would incur similar expenses. Moreover, intolerable disruptions would likely occur during such a transition because of the need to coordinate and test changed circuits.

Indeed, a customer with a multipoint network has limited options when confronted with a substantial rate increase. The customer can simply pay the higher charges. Alternatively, the customer could convert its network to digital, but to do so would entail both a complete re-engineering of its network, with the attendant installation and other provisioning charges, as well as the substitution of terminal equipment. In essence, the customer would need to install an entirely new network and would likely have to operate dual networks for some period of time in order to ensure uninterrupted service. Or, the customer could move its traffic to another service provider, assuming it could find a company that could handle its analog requirements.[27] This alternative also would require a

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[27] Although companies other than AT&T offer analog services, the differences in the ready availability and ultimate quality of service among carriers in this service area can be substantial.

complete re-engineering of the customer's network as well as substantial installation and provisioning expenses.

In sum, AT&T's classification of analog MPCs as digital services would effectively circumvent the protections of the Interexchange Competition Order. Despite AT&T's suggestions to the contrary, a circuit is defined as analog by its termination points, not by its IOCs. And, as Transmittal No. 4322 dramatically illustrates, rates for analog services are not adequately constrained by market forces. Consequently, the FCC should either clarify or reconsider its Interexchange Competition Order to specify that all rate elements associated with the provision of analog services, regardless of AT&T's network configuration, are to be included under its new Basket 3. Only by such action can the agency establish adequate protections to ensure the proper implementation of its decision to protect analog private line users.

## IV. CONCLUSION

For the foregoing reasons, AT&T's Transmittal No. 4322 should be rejected, suspended or investigated to determine the reasonableness of the rates in light of the Interexchange Competition Order. The agency should consider whether AT&T's filing is an acceptable response to the FCC's concerns regarding private line rates or, as is shown by ARINC herein, contrary to the Commission's goal to protect ratepayers of monopoly services.

Respectfully submitted,

AERONAUTICAL RADIO, INC.

By _____

John L. Bartlett
Robert J. Butler
Kurt E. DeSoto

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429 -7000

Its Attorneys

August 7, 1992

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 1992, I caused copies of the foregoing " Petition For Partial Rejection, Suspension or Investigation" of Aeronautical Radio, Inc., to be mailed via first-class, postage prepaid, to the following:

Mr. M.F. DelCasino
Administrator - Rates & Tariffs
Room 32D66
55 Corporate Drive
Bridgewater, NJ 08807-6991

Cheryl A. Tritt, Chief
Common Carrier Bureau
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1919 M Street, N.W.
Washington, D.C. 20554

Gregory J. Vogt, Chief
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Judith A. Nitsche, Chief
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Kim Riddick

TAB C

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ROBERT J. BUTLER
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DUPLICATE

September 24, 1992

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(202) 429-7049
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Cheryl A. Tritt
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

**Re: CC Docket Nos. 90-132, 92-134;**
**AT&T Tariff Transmittal No. 4322**

Dear Ms. Tritt:

Aeronautical Radio, Inc. ("ARINC"), by its attorneys, hereby supplements its pleadings in the above-captioned proceedings seeking reconsideration and clarification of the Commission's IXC Order and opposing AT&T's third rate revision in eleven months that cumulatively would increase certain analog private line rate elements by almost 1,000 percent.[1] In those pleadings, ARINC noted that the proposed increases were inconsistent with specific Commission objectives to protect captive analog private line ratepayers from this very type of rate inflation.

## Background and Introduction

ARINC understands that, in various ex parte meetings with Commission staff, AT&T has taken issue with ARINC's and other petitioner's claims that analog users are captive

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[1] Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132, "Petition for Clarification and Reconsideration," filed Nov. 25, 1992, and "Supplemental Comments," filed May 22, 1992, by Aeronautical Radio, Inc.; Price Cap Performance Review for AT&T, CC Docket No. 92-134, "Comments of Aeronautical Radio, Inc.," filed Sept. 4, 1992; AT&T Communications Transmittal No. 4322, "Petition for Partial Rejection, Suspension or Investigation," filed by Aeronautical Radio, Inc., on August 7, 1992 ("ARINC Petition"). ARINC respectfully requests authorization, to the extent necessary, to file these supplemental comments. See 47 C.F.R. §§ 1.45(c), 1.411(d) (1991).

ratepayers. It has argued that there are competitive alternatives to AT&T's analog services, including additional suppliers and substitutable services.

At the outset, ARINC notes that AT&T's argument amounts to an untimely petition for reconsideration of the Commission's decision in the IXC Order, in which the Commission found precisely the opposite.[2] The FCC there stated:

> Analog private line services are of diminishing importance in the marketplace and these services are consequently less subject to competition than other business services. Under the circumstances, we are concerned that elimination of price cap restraints for analog private lines services could lead to higher prices for these services. While many customers would likely respond to higher prices by switching to digital services, adequate substitutes using digital technology are not available to all users of analog private line services.[3]

Given these conclusions, AT&T's arguments should be rejected out of hand.

In any event, ARINC believes that attempting to change its existing analog services to equivalent analog services offered by a competing carrier or to change to alternative services would not be in the best interest of ARINC or its customers.

## Conversion to an Alternative Analog Service Provider

ARINC acknowledges that certain common carriers do claim to offer equivalent services; however, none have the extensive network presence of AT&T. Thus, local access costs to reach the points-of-presence (POP) of competitive carriers would be higher than those to reach AT&T POPs.

In addition, the performance of LEC access circuits is significantly worse than that of interexchange circuits when

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[2] Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880 (1991)("IXC Order)(emphasis added).

[3] Id. at 5895.

calculated on a per mile basis. The effect of switching carriers would shift the number of circuit miles in favor of LEC miles instead of interexchange miles. This would likely have a negative impact on the performance of ARINC's network, and consequently upon ARINC's service quality to serve the airline industry.

Most importantly, the cost and disruption associated with changing carriers has been clearly understated by AT&T. Local exchange companies impose stiff installation charges for implementation of analog private line access, which when added to the installation costs of the interexchange carrier amount to several thousands of dollars per circuit.

Any conversion to an alternate analog multidrop service provider would entail a lengthy and complex coordination-intensive process requiring personnel at every location to simultaneously effect the cutover. In addition, the planning and engineering which would accompany such a project would be very costly. Altogether, the labor costs may equal or exceed the installation costs cited above.

The planning process cannot be underestimated when the final product serves the airline industry and the FAA. Selection of an inferior vendor, or inadequate engineering in advance, could result in poor network performance and interruption of essential safety of flight services. Even if a reliable cost-effective alternative were available, it would be months and perhaps years before the rigorous planning and approval process could be completed.

No such transition occurs without interruption of service. When AT&T unilaterally converted ARINC's analog services to the ASDS program, hundreds of hours of service interruptions occurred. The potential for engineering errors, installation errors, or planning errors is significant when multiplied by the literally thousands of network components associated with such a migration.

**Conversion to Truly Digital Services**

Planning costs, installation costs, and the potential for service disruption are significant in any change that ARINC chooses to make, whether changing analog carriers or moving to new digital services with any carrier. Therefore, it only makes sense that the risk and cost of such transition should be incurred only once, not twice.

ARINC recognizes the long-term promise of digital services and, as these new services become available, ARINC is evaluating and testing them. However, ARINC's networks do not necessarily follow the deployment pattern of these new digital services. In many cases, the sites must be located where enroute aircraft fly regardless of surrounding population. Digital services are not yet available in all of these locations to meet the demands of ARINC's network. Attached for the agency's information is a description of ARINC operations currently supported by AT&T's private line services.

The data communications equipment industry also is working to create the products necessary to fulfill ARINC's needs, but cannot do so yet. Specifically, ARINC's requirements for backup systems have not yet been met. Failures within the existing analog network can be recovered through the Public Switched Telephone Network (PSTN). This is known commonly as "dial backup." No such alternative exists for the new digital services. In fact, the only solution is to retain the analog equipment in use today to create a parallel on-demand analog network. Ultimately, this need will be met through the emerging ISDN networks and the on-demand digital services they promise.

In its objective of providing highly reliable and cost efficient service to its customers, ARINC believes that digital networking will soon be available and a viable alternative. Until then, however, ARINC feels that effecting two network transitions would be too costly and too risky for the short term benefit of avoiding AT&T's aggressive rate manipulation. ARINC would have no other choice than to bear the cost increases and hope that digital networking is just around the corner.

## Conclusion

AT&T's ability to raise rates as high as almost 1,000 percent in some cases is unequivocal proof that it has market power in this service segment and that ARINC and other analog users are captive ratepayers; ARINC simply does not have competitive alternatives. Unless the Commission takes action in these proceedings, ARINC will be required to absorb the exorbitant charges associated with these services, and the public will likely suffer the consequences associated with the economic impact of these increases. The FCC in the IXC Order was almost prophetic in its warning in this regard.

ARINC therefore urges the agency to reject AT&T's pending tariff proposal and grant its petition for clarification and reconsideration in Docket 90-132. As a minimum, the FCC should investigate the tariff rates, suspend the tariff for a day, and impose an accounting order so that users will be entitled to a refund for any overcharges that are allowed to become effective pending the outcome of such investigation.[4]

Should you have any questions regarding this matter, please call me at (202) 429-7035 or my associate Kurt E. DeSoto at (202) 429-7235.

Respectfully submitted,

Robert J. Butler
Counsel for Aeronautical Radio, Inc.

RJB/krr
cc: Gregory J. Vogt, Esq.
Chief, Tariff Division

Mr. M.F. DelCasino
American Telephone & Telegraph Company

All parties

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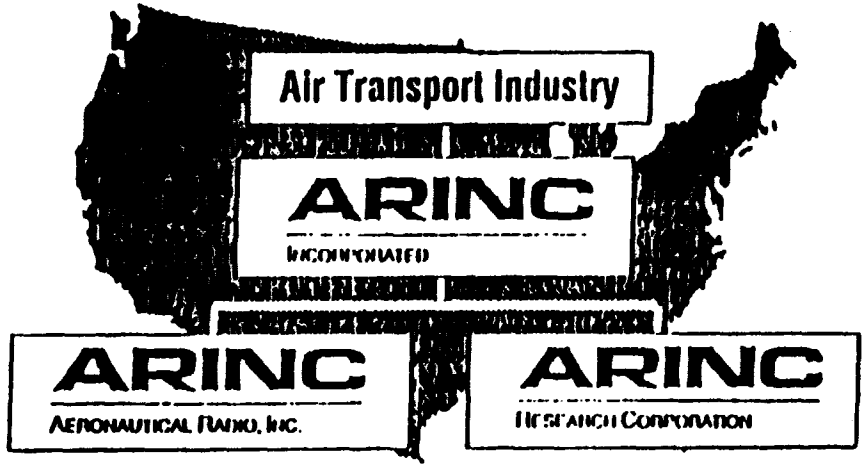
[4] See generally Illinois Bell Telephone Company v. FCC, No. 89-1365 (D.C. Cir. June 16, 1992).

# COMPANY OVERVIEW

**Aeronautical Radio, Inc.**
**(ARINC)**

**September 21, 1992**

# CORPORATE HERITAGE




| | |
|---|---|
| Aeronautical Radio, Inc., Founded | 1929 |
| Initial Service to Department of Defense | 1951 |
| VHF Air/Ground Networks Operational | 1956 |
| ARINC Research Corporation Founded | 1958 |
| First ARINC Network Established | 1961 |
| ACARS Air/Ground Data Link Operational | 1978 |
| Aeronautical Satellite Communications Initiated | 1990 |
| Automatic Dependent Surveillance Pacific Engineering Trials | 1990 |

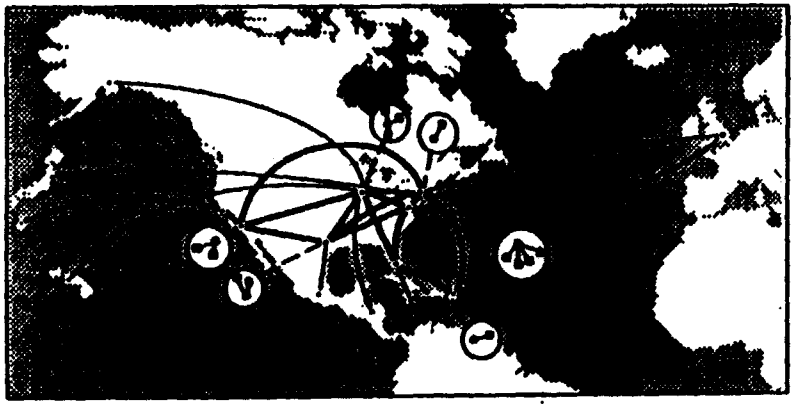
# ARINC STOCKHOLDERS

Aero Services International, Inc.
Aerovias Nacionales de Colombia, S.A.
Air Canada
Air France
Alaska Airlines, Inc.
Aloha Airlines, Inc.
Amalgamated Wireless (Australasia) Ltd.
American Airlines, Inc.
Braniff, Inc.
British Airways Board
Chicago Helicopter Airways, Inc.
Compania Mexicana de Aviacion, S.A. de C.V.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Det Danske Luftfartselskab A/S
Eastern Air Lines, Inc.
Empresa Consolidada Cubana de Aviacion
Federal Express Corporation
Ford Motor Company
Frontier Airlines, Inc.
General Motors Research Corporation
The Goodyear Tire and Rubber Company
Hawaiian Airlines, Inc.
Hughes Aircraft Company
International Aeradio, PLC
KLM Royal Dutch Airlines
Lufthansa German Airlines
Lukens, Inc.
McDonnell Douglas Corporation
Northwest Airlines, Inc.
Pan American World Airways, Inc.
Pennzoil Company
Petroleum Helicopters, Inc.
Philippine Air Lines, Inc.
Pilgrim Airlines
Radio Aeronautica de Cuba, S.A.
R.E. Ruch
Scandinavian Airlines System
Swiss Air Transport Co. Ltd.
Taca International Airlines, S.A.
Trans World Airlines, Inc.
United Airlines
Universal Airways, Inc.
USAir
USX Corporation

# ARINC
# COMMUNICATIONS SERVICES

## ARINC Data Network Service (ADNS)

**Packet Switch Network for the Aviation Industry**



## Aircraft Communications Addressing and Reporting System (ACARS)

**VHF Voice and Data Link to Aircraft**


## Other Services

**Industry Coordination of Communications and Avionics Standards**

- Avionics Specifications
- Aircraft Avionics Standards
- Standards for Test Equipment

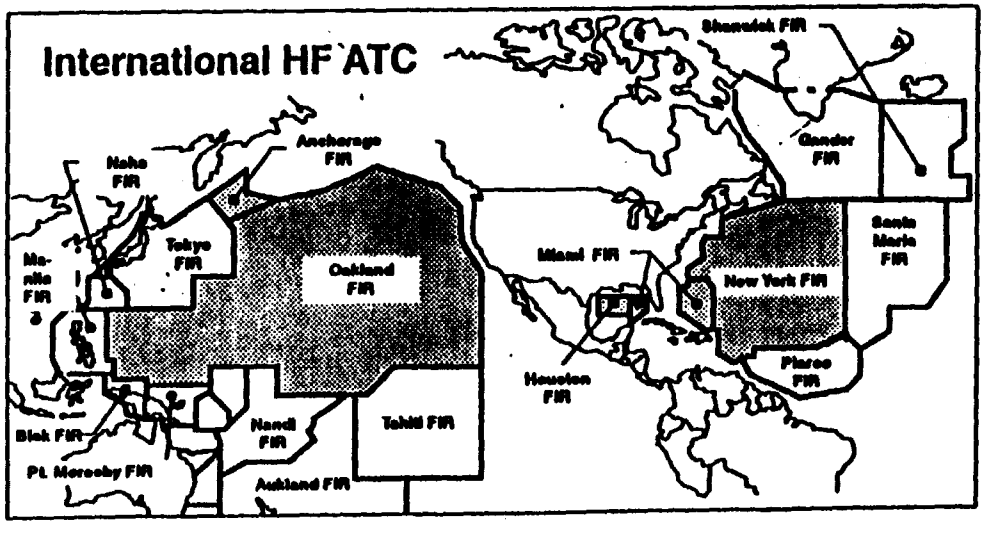
**Shared Information Services**

- Data Bases for Aviation Industry

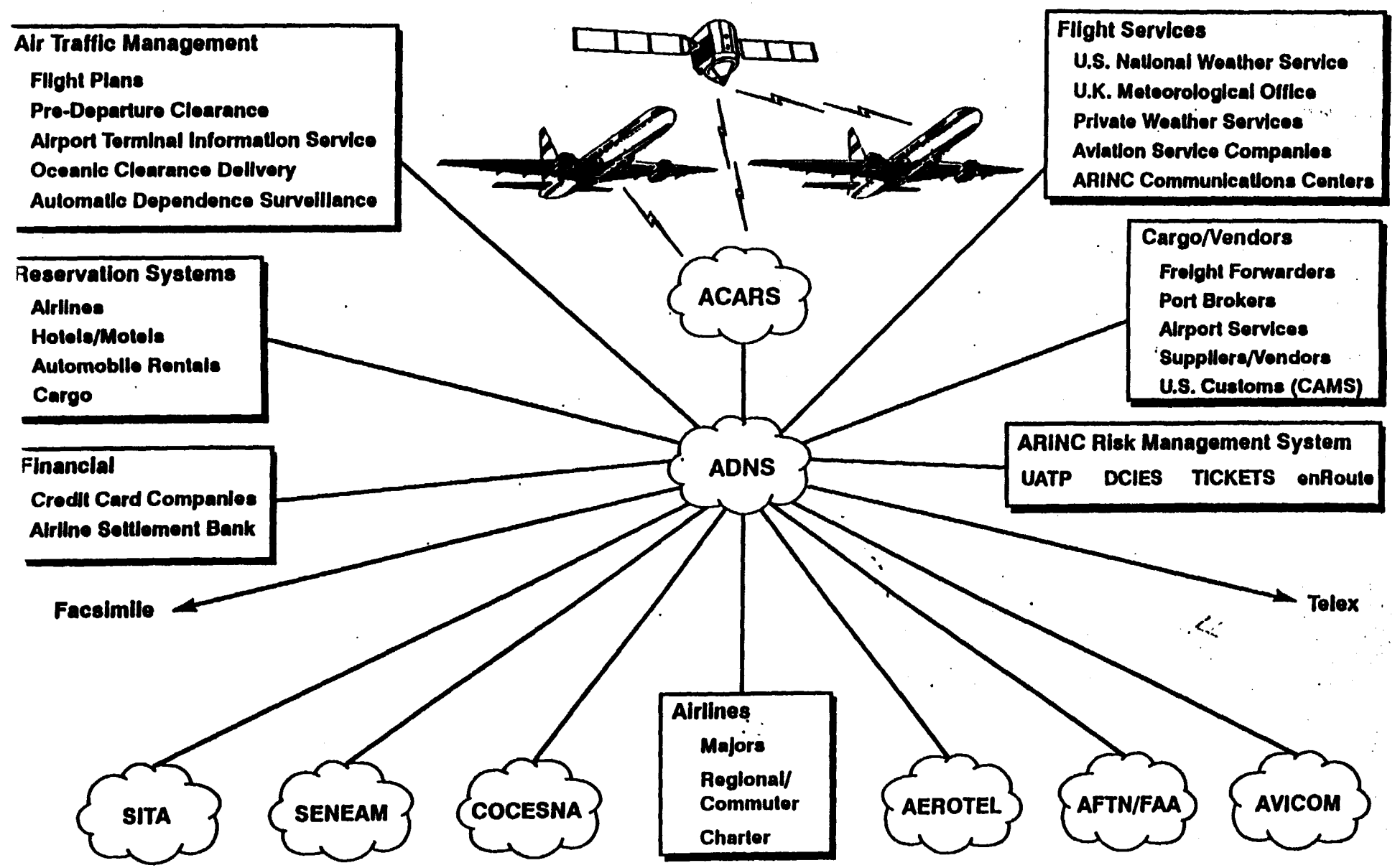
**Shared Airport Radio Services**

- Conventional
- Trunked

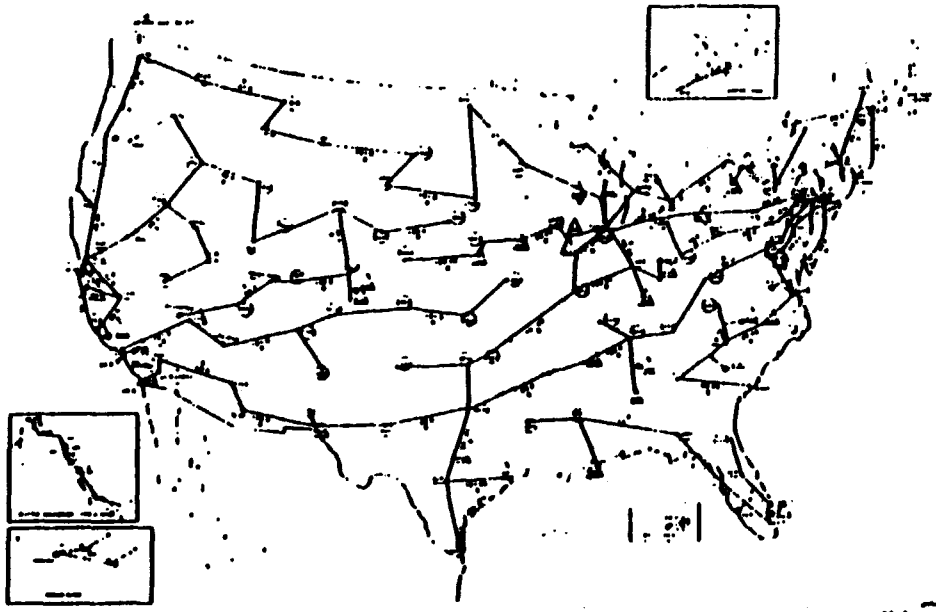
ATL BWI BOS CLT ORD DFW LAX MIA
BNA EWR JFK PHL RDU SFO SJU



# ARINC Communications Services



# AIR/GROUND VOICE SERVICES



VHF Domestic Coverage

**Domestic:**

- License holder for all the aeronautical frequencies
- Domestic VHF coverage provides continuous coverage above 20,000 feet
- On-ground coverage at most major airports
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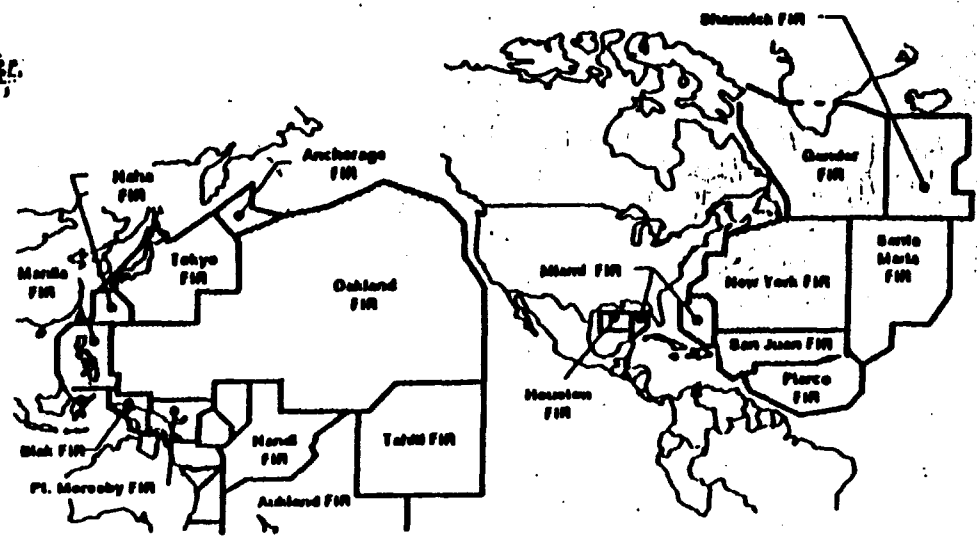
- Always required as a "satety network"

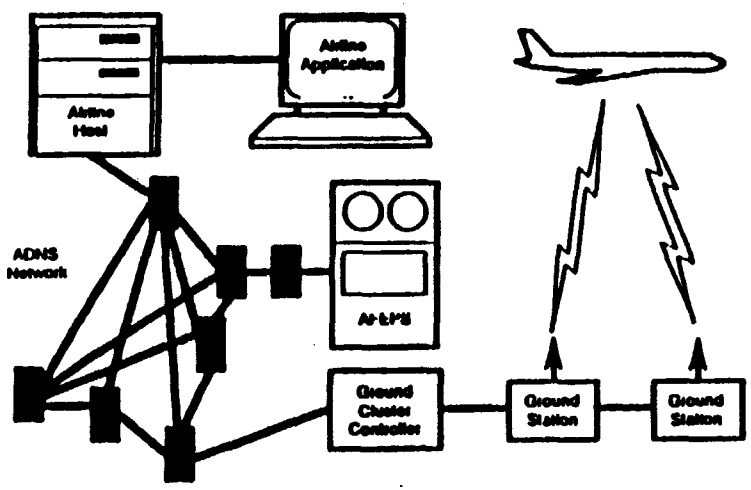
**International:**

- Service provided to FAA and airlines for all U.S.-controlled oceanic airspace
- ARINC provides radio operators and communication facilities for all areas
- Meets FAA requirements for zero errors




HF International Coverage

# AIRCRAFT COMMUNICATIONS AND REPORTING SYSTEM (ACARS)




**Continuous Coverage Above 20,000 Feet**

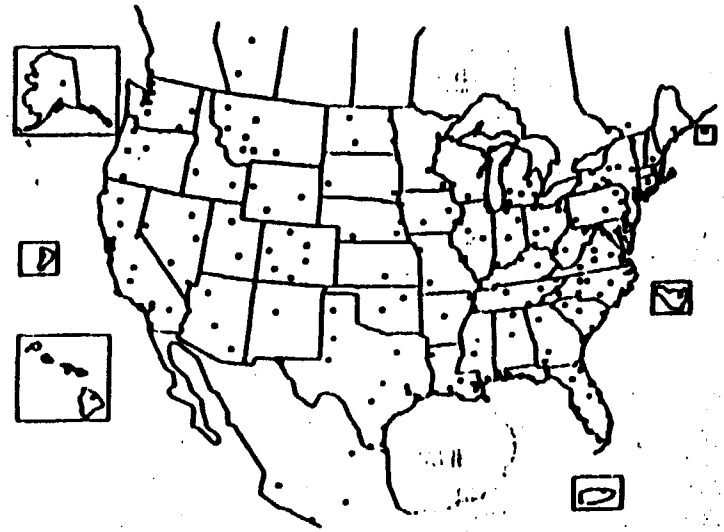
**On-Ground Coverage Provided at +250 Airports**

**Allows Aircraft to Perform as Mobile Data Terminal**

**Ground Stations Networked Through Private Line, Satellite, and V-SAT Technologies**

**ARINC Front-End Processor System (AFEPS) Manages Data Link Communications with More Than 2,600 Aircraft Daily**

**More Message Traffic Handled at Chicago (ORD) in One Day Than All Other Service Providers Handled in a Month**



**Provides Airlines with Information Regarding:**

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- **Crew pay**
- **Passenger service**
- **Weather**
- **Operational requirements**